

INTERNAL REVENUE SERVICE  
District Director

DEPARTMENT OF THE TREASURY  
Midstates District Office  
1100 Commerce Street  
Dallas, Texas 75242-0000

Employer Identification Number:  
[REDACTED]

Person to Contact:  
[REDACTED]

Contact Telephone Number:  
[REDACTED]

In Response, Refer to:  
[REDACTED]

Date: OCT 26 1999

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986.

We have also considered your application for recognition of exemption from Federal income tax under Section 501(c)(4) of the Internal Revenue Code.

The information submitted discloses that you were incorporated on [REDACTED] under the non profit corporation laws of [REDACTED]. The purpose stated in your organizational document is to "provide an entity pursuant to [REDACTED] hereinafter called the [REDACTED] for the organization and operation of the council of co-owners required under the [REDACTED] for the operation of [REDACTED] a [REDACTED] located in [REDACTED]."

Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, was received from [REDACTED] on [REDACTED]. The application states that the members of the association are property owners of [REDACTED].

Enclosed with the application was a document listing the members of the owners association as [REDACTED] and [REDACTED].

Under Part II of the Form 1023 application, Activities and Operational information, it is stated that "the object of the association is to manage and support the upkeep of the outside of the buildings of the [REDACTED]." It is also stated that "The association is responsible to maintain the four outside walls, roofs, landscaping and parking lot."

A copy of the [REDACTED] was forwarded during the review of the application. That document defines the [REDACTED] as: (a) those items designated as [REDACTED] by the [REDACTED] or this [REDACTED] (b) the land and building, except those portions which comprise a Suite; (c) the gardens, fences, walks driveways and parking areas; and, (d) those systems or portions thereof located on the Land and in a Building providing central services, including gas, telephone, light, water, sewage, electricity and security.

An executed Form 12180, authorizing third party contact with [REDACTED], the association's tax preparer was submitted during the review of the Form 1023 application.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of corporations organized and operated exclusively for religious, charitable, literary, scientific, and educational purposes, no part of the net earnings of which inures to any private shareholder or individual.

Section 1.501(c)(3)-1 of the Income Tax Regulations relates to the definition of the organization and operation of organizations described in Section 501(c)(3). It is quoted, in part, as follows:

"(a)(1) Organizational and operational tests. In order to be exempt as an organization described in Section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

"(a)(2) The term "exempt purpose or purposes," as used in this section, means any purpose or purposes specified in Section 501(c)(3)...."

"(c)(1) Primary activities. An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities, which accomplish one or more of such exempt purposes, specified in Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose...."

"(c)(2) Distribution of earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals...."

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized and operated exclusively for exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization seeking exemption under Section 501(c)(3) to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 501(c)(4) of the Code provides for the exemption from Federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one that is operated primarily for the purpose of bringing about civic betterment and social improvements.

The Internal Revenue Service takes the position that in order for an organization to qualify for exemption from Federal income tax as a social welfare organization described in Section 501(c)(4) of the Code, it must be primarily engaged in promoting in some way the common good and general welfare of the community as a whole.

*Revenue Ruling 74-17, 1974-1 CB 131*, describes an organization seeking exemption under Code section 501(c)(4). The organization is an association formed by the unit owners of a condominium housing project that is operated to provide for the management, maintenance, and care of the common areas of the project. Its income is from membership assessments and its disbursements are for normal operating expenses.

A condominium is defined by statute in the state in which the organization is located as an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with separate interest in space in a residential, industrial, or commercial building on such real property, such as an apartment, office, or store. The statute provides that the owner of a condominium unit individually owns the interior surfaces of the perimeter walls, floors, ceilings, windows, and doors of his unit.

The statute further provides that the common areas of the condominium property are owned by the unit owners as tenants in common, in equal shares, one for each unit. It lists the following elements as common areas of condominium property: bearing walls, columns, floors, central heating, central refrigeration, and central air conditioning equipment, reservoirs, tanks, pumps, and other central services, pipes, ducts, flues, chutes, conduits, wires, and other utility installation, wherever located, except the outlets thereof when located within the unit. This statutory definition implicitly includes common areas normally forming a part of a residential development such as streets, sidewalks, parks, and open areas.

The statute also imposes a requirement on the owner of the project to make and record a declaration of project restrictions and servitudes prior to the conveyance of any condominium therein, such restrictions to bind all owners of condominiums



[REDACTED]

in the project. The statute states that such servitudes may provide for the management of the project by either the condominium owners, a board of directors elected by the owners, or a management agent elected by the owners or the board or named in the declaration.

In Commissioner v. Lake Forest, Inc., 305 F. 2d 814 (4th Cir. 1962), the court held that a cooperative housing corporation was not exempt as a social welfare organization under section 501(c)(4) of the Code since its activities were of the nature of an economic and private cooperative undertaking.

*Revenue Ruling 65-201, 1962-5, C. B. 170*, holds that a cooperative organization operating and maintaining a housing development and providing housing facilities does not qualify for exemption from Federal income tax under section 501(c)(12), or any other provision of the Code.

*Revenue Ruling 69-280, 1969-1, C. B. 152*, holds that a nonprofit organization formed to provide maintenance of exterior walls and roofs of members' homes in a development is not exempt from Federal income tax under section 501(c)(4) of the Code.

By virtue of the essential nature and structure of a condominium system of ownership, the rights, duties, privileges, and immunities of the members of an association of unit owners in a condominium property derive from, and are established by, statutory and contractual provisions and are inextricably and compulsorily tied to the owner's acquisition and enjoyment of his property in the condominium. In addition, condominium ownership necessarily involves ownership in common by all condominium unit owners of a great many so-called common areas, the maintenance and care of which necessarily constitutes the provision of private benefits for the unit owners.

Because the organization's activities described in Revenue Ruling 69-280 are for the private benefit of its members, it cannot be said to be operated exclusively for the promotion of social welfare and the organization does not qualify for exemption from Federal income tax under section 501(c)(4) of the Code.

[REDACTED] is not exempt under Internal Revenue Code Section 501(c)(3) because its activities are not charitable, religious, scientific, or educational. In addition, its purposes and activities are performed for the private benefit of the condominium owners.

Further, [REDACTED] is not exempt under Internal Revenue Code Section 501(c)(4) because its activities include maintenance of outside walls and roofs, which were held not to be exempt in Revenue Ruling 69-280. In addition, maintenance of the parking lot used by customers of the condominium owners is also for a private business purpose. Finally, Revenue Ruling 74-17 concluded that maintenance of common areas in a condominium system of ownership constitutes the provision of private benefits for the unit owners, which means such a system is not operated exclusively for the promotion of social welfare as required by section 501(c)(4).

Accordingly, it is held that you are not entitled to exemption from Federal income tax as an organization described in Internal Revenue Code sections 501(c)(3) or 501(c)(4), and you are required to file Federal Income Tax Returns on Form 1120.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issues, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service".

[REDACTED]

If you do not provide the requested information, the Internal Revenue Service will consider that you have not taken all reasonable steps to secure the determination. Under section 7428(b)(2) of the Internal Revenue Code, not taking all reasonable steps, in a timely manner, to secure the determination may be considered as a failure to exhaust administrative remedies available to you within the Service, and may preclude the issuance of a declaratory judgment in the matter under judicial proceedings.

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

If we do not hear from you within 30 days from the date of this letter, this determination will become final. In accordance with Code Section 6104(c), we will notify the appropriate State officials of this action.

Sincerely yours,



Ladd Ellis, Jr.  
District Director

Enclosures:  
Publication 892  
Form 6018  
Return Envelope